

CONTRACT NO. - _____

CONTRACT FOR THE STORAGE OF HELIUM
Between

and the
UNITED STATES OF AMERICA

THIS CONTRACT, made and entered into this 1st day of _____, 19XX, is by and between _____ (hereinafter called Company), a corporation organized and existing under the laws of the State of Delaware, with its principal office at _____, and the UNITED STATES OF AMERICA (hereinafter called United States), acting through the United States Bureau of Land Management, Department of the Interior.

WITNESSETH THAT:

WHEREAS, the production rate of helium is often determined by operational considerations other than current needs for helium;

WHEREAS, helium now appears to be available in excess of current needs and such excess is lost to the atmosphere unless stored in appropriate facilities;

WHEREAS, Company desires to acquire and to store helium for future use;

WHEREAS, Company agrees to compensate the United States for costs incurred by the United States caused by accommodation of the Company;

WHEREAS, United States has certain facilities available for the storage of helium; having capacity in excess of that required to meet the needs of existing storage programs of the United States;

WHEREAS, the Secretary of the Interior is authorized pursuant to the Helium Act, approved September 13, 1960 (P.L. 86-777; 74 Stat. 918; 50 U.S.C., Sections 167-167n), hereinafter called the Act, to make just and reasonable contracts and agreements for the acquisition, processing, transportation, or conservation of helium, helium-bearing natural gas, or helium-gas mixtures upon such terms and conditions, and for such periods, not exceeding twenty-five (25) years, as may be necessary to accomplish the purposes of the Act;

WHEREAS, the Act (Section 15) provides that it is in the national interest to foster and encourage individual enterprise in the development and distribution of supplies of helium;

WHEREAS, the Director, U.S. Bureau of Land Management, is authorized pursuant to a delegation from the Secretary of the Interior (215 WBM 4.1) to exercise certain authority of the Secretary under the Act; and such delegation provides the authority required by the Director, U.S. Bureau of Land Management, to enter into this Contract for and on behalf of United States; and

WHEREAS, the Director, U.S. Bureau of Land Management, has determined that this Contract will help to accomplish the purposes of the Act.

NOW THEREFORE, in consideration of the premises and agreements contained herein, United States and Company agree as follows:

ARTICLE I

Definitions

1.1 Helium-gas mixture - The term "helium-gas mixture" shall mean the gaseous product delivered to United States by Company for storage and that portion of the gaseous product contained in United States' helium storage system, which is comprised of helium predominantly together with other constituents of natural gas.

1.2 Contained helium - The term "contained helium" shall mean the amount of helium in a "helium-gas mixture."

1.3 Helium storage reservoir - The term "helium storage reservoir" shall mean United States' Bush Dome, Cliffside Gas Field, near Amarillo, Texas.

1.4 Helium storage pipeline - The term "helium storage pipeline" shall mean pipeline extending from the vicinity of Bushton, Kansas, to the helium storage reservoir, with lateral extensions to various helium extraction plants connected to said pipeline used or designed for the purpose of gathering and transporting helium-gas mixture to and from the helium storage reservoir.

1.5 Helium storage system - The term "helium storage system" shall mean the system comprised of the "helium storage pipeline" and the "helium storage reservoir."

1.6 Standard cubic foot - The term "standard cubic foot" shall mean the volume of helium-gas mixture or contained helium, as the case may be, which occupies the space in one (1) cubic foot when at a temperature of sixty (60) degrees Fahrenheit and at an absolute pressure of fourteen and sixty-five one-hundredths (14.65) pounds per square inch.

1.7 Mcf - The term "Mcf" shall mean one thousand (1,000) standard cubic feet.

1.8 Day - The term "day" shall mean a period of twenty-four (24) consecutive hours beginning and ending at 8 a.m. Central Time.

1.9 Month - The term "month" shall mean a period of time beginning at 8 a.m. Central Time on the first day of a calendar month and ending at 8 a.m. Central Time on the first day of the succeeding calendar month.

1.10 Contracting Officer - The term "Contracting Officer" shall mean the person holding the office of Field Manager, Amarillo Field Office, U. S. Bureau of Land Management, at the time of the execution of the contract or his duly appointed successors. *References to the term Contracting Officer do not have the same definition as used in the Federal Acquisition Regulations.*

1.11 Contract Year - The term "Contract Year" shall mean a period of time beginning at 8 a.m. Central Time on October 1 of each year and ending at 8 a.m. Central Time on the following October 1. If this Contract covers any portion of a contract year then that period will be prorated.

1.12 Activity - The term "Activity" shall mean the summation of the volumes of helium that come into and leave the helium storage system.

1.13 Acceptance/Redelivery Point - The term "Acceptance/Redelivery Point" shall mean any pipeline tap or connection into the helium storage pipeline.

1.14 Existing Agreement - The term "Existing Agreement" shall mean any agreement, written, oral, or implied, in effect as the date hereof between United States and Company for helium storage system services dated prior to the effective date of this Contract.

1.15 Notification of a qualifying transfer shall be made by official correspondence via mail, confirmed facsimile transmission, confirmed e-mail, or other mutually agreeable means.

1.16 Compression Facilities - The BLM and the refiners (those companies currently taking redelivery of crude helium through the Helium Storage System), are installing crude helium gas compression for the purpose of improving redelivery capabilities to the refiners connected to the United States' Helium Storage System.

1.17 Enrichment Unit Facilities - The BLM and the helium refiners (those companies currently taking redelivery of crude helium through the Helium Storage System), are installing an enrichment unit for the purpose of improving crude helium gas redelivery and ensuring continued capacity to the refining plants connected to the United States' Helium Pipeline System.

1.18 Enrichment Services Agreement - The term "Enrichment Services Agreement" shall mean the *BLM Crude Helium Enrichment Unit Construction and Services Agreement* signed between the BLM and the Cliffside Refiners, L.P. effective on July 17, 2001.

ARTICLE II

Acceptance, Storage, and Redelivery of Helium-Gas Mixtures

2.1 United States agrees to accept and to store Company's helium-gas mixture as hereinafter provided at such flow rates and in such quantities as Company desires: Provided, however, That (1) the helium-gas mixture tendered for delivery to storage is delivered by Company to United States' helium storage pipeline at a point north or upstream of United States' helium plant at Exell, Texas, (2) the helium-gas mixture contains: (a) at least sixty-five (65) percent helium by volume, except as allowed in Article 4.1.d (b) no more than twenty (20) parts per million of neon, (c) no more than two hundred (200) parts per million of carbon dioxide, (d) no more than three (3) percent methane (CH₄) by volume, (e) no more than ninety-six (96) parts per million of heavy hydrocarbons (C₃+), (f) no more than two and three-tenths (2.3) percent hydrogen by volume, and (g) no more than seven (7) pounds of water (H₂O) per million cubic feet of gas, (3) the temperature of the helium-gas mixture tendered for delivery shall not exceed one hundred (100) degrees Fahrenheit, (4) the helium-gas mixture is delivered at a pressure high enough to enable it to flow directly into United States' helium storage pipeline against whatever pressure exists therein from time to time at the point of acceptance of Company's helium-gas mixture for storage by United States, (5) the helium-gas mixture does not contain any component that the United States has determined is detrimental to the helium storage system, and (6) operations are subject to the physical limitations of the pipeline system and prudent procedures as determined by the Contracting Officer without being arbitrary or capricious. It is understood and agreed that Company shall not be obligated to deliver its helium-gas mixture at a pressure in excess of eighteen hundred (1,800) pounds per square inch gage. United States will accept Company's helium-gas mixture for storage hereunder at the point where the existing helium storage pipeline is connected with the outlet of Company's measurement facilities. By mutual agreement in writing between Company and United States, redelivery of Company's contained helium may be made at some other points on the helium storage system and under other conditions of pressure, composition, and methods of measurement and analysis. Payment for redelivery at such other points or under such other conditions shall be as provided in Article IV.

2.2 United States agrees to redeliver to Company during the term of this Contract one-hundred (100) percent of the cumulative volume of contained helium accepted by United States for storage hereunder. The contained helium shall be redelivered to Company at the point or points of acceptance of helium for storage hereunder and in a helium-gas mixture containing not less than fifty (50) percent helium by volume, and at the pressure existing in the system at the time and at the point of redelivery and

shall be redelivered under conditions that permit suitable measurement and analysis specified by Article VI hereof. Company agrees to compensate, pursuant to Article IV, the United States for any investment and costs related to the contractual requirement to redeliver a helium-gas mixture containing not less than fifty (50) percent helium by volume.

2.3 The parties agree that title to the constituents of natural gas other than helium comprising the helium-gas mixture accepted for storage shall pass to United States at the point of acceptance for storage and that upon redelivery to Company of the contained helium as required by this Contract, title to all constituents of the helium-gas mixture so returned shall pass to Company at the point of redelivery.

2.4 Company shall, on or before July 1 of each year and upon execution of this Contract, advise the Contracting Officer of the volume of contained helium for which it expects to request acceptance and/or redelivery during the succeeding twelve (12) months, beginning October 1 of each year, so that United States may estimate the total volume of contained helium which may need to be redelivered from the helium storage system during each succeeding twelve (12) months, beginning October 1. Failure to provide this information within ten (10) days after receiving a second written notice by certified mail from the United States that it is due, the Company agrees to pay ten thousand (\$10,000) dollars in liquidated damages. If at any time in the sole opinion of the Contracting Officer and notwithstanding any other provision of this Contract, the deliverability capacity of the helium storage system should be inadequate to meet fully the total expected redelivery requirements as determined above, the available redelivery capacity of the helium storage system shall be used first to supply the helium needs of Federal agencies pursuant to the Act and any amendments thereto, and second to meet requests for the redelivery of helium for other purposes. In the event it should become necessary for the Contracting Officer to limit redelivery of helium-gas mixture under this Contract, as set out above, the redelivery capacity of the helium storage system which is not needed to meet Federal agency needs for helium will be allocated by the Contracting Officer among all persons and companies storing helium in the helium storage reservoir on a reasonable basis to be determined at that time by the Contracting Officer after meeting and consulting with all parties hereto. Company agrees to abide by the terms of any method that the Contracting Officer deems appropriate. If Company redelivers more helium than allocated the United States shall implement Article VII.

2.5 The Contracting Officer will advise Company on or before September 1 of each year of the average daily rate contemplated for acceptance and/or redelivery of contained helium during succeeding twelve (12) month periods beginning October 1. The Contracting Officer will also notify Company of any scheduled maintenance work which will interrupt acceptance or redelivery of helium hereunder. Notwithstanding the foregoing limitations, United States shall use its best efforts to redeliver helium-gas mixture at rates requested by Company.

2.6 Company agrees to notify, in a timely manner, the United States of scheduled plant turnarounds and major unscheduled plant problems that affect the operations of the helium storage system. United States agrees to keep this information confidential, but Company agrees that United States may release it on a need-to-know basis.

2.7 If additional refining capacity is added to the Helium Storage System by the existing or by new helium refiners, the helium refining capacity as of October 1, 2000, will determine priority in receiving redelivery of crude helium from the Helium Storage System. The refining capacity as of October 1, 2000, is defined on record and published in the NAS Study at 4.05 Bcf per year and will be allocated on that basis. The preceding limitation is due to the physical constraints of the Helium Storage System.

ARTICLE III

Effective Date, Term, and Existing Agreements

3.1 This Contract shall be effective from 8 a.m. Central Standard Time on the 1st day of October 1995, and shall continue thereafter until terminated as hereinafter provided in this Article III or in

Article XI. This Contract will be reviewed every five (5) years, from October 1, 1995, for the purpose of making sure the United States is receiving full reimbursement of expenses related to this Contract. This Contract may be terminated on October 1, 2005 by either party hereto giving the other party not less than twelve (12) months' advance notice of its election so to do. The United States, upon not less than twelve (12) months' advance notice and with the consent of the Company, may extend the term of this Contract in five (5) year increments. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed twenty-five (25) years.

3.2 It is understood that this Contract is made contingent upon the Congress making the necessary appropriations or authorizations for expenditures hereunder after the current fiscal year has expired. In the event such appropriations or authorizations as may be necessary to carry out this Contract are not made, Company hereby releases United States from all liability due to failure of the Congress to make such appropriations or authorizations: Provided, however, That in such event, United States agrees, within the limits of its then existing authorities and capabilities, to operate the helium storage system, upon Company's request and at Company's expense, to the extent necessary to permit the redelivery of Company's stored helium and Company shall be entitled to a credit in the aggregate amount of such expense against any sums thereafter due to United States hereunder, or a quantity of contained helium equal in value to the aggregate amount of any such expense calculated as provided in Article IX.

3.3 This Contract supersedes and replaces all Existing Agreements between the United States and Company for helium storage system services as provided herein. All Existing Agreements are herein terminated and all helium stored under Existing Agreements is transferred to this Contract. All accrued storage charges under Existing Agreements shall be paid as provided in Article V paragraph 6. This Contract constitutes the complete agreement between the United States and Company, and there are no oral promises, prior agreements, understandings, obligations, warranties, or representations between the United States and Company relating to this Contract other than those set forth herein or as amended.

ARTICLE IV

Charges

4.1 Company shall pay to United States for the acceptance, redelivery, storage, and other services provided under this Contract the following charges, subject to adjustments as hereinafter provided:

a. Contract Assessment Charge. For each year that Company holds this Contract whether used or not, Company shall pay to United States twelve-thousand (\$12,000) dollars due at the beginning of each Contract Year. New storage contracts signed during the Contract Year will have their Contract Assessment Charge prorated to the effective date of the Contract.

b. Acceptance/Redelivery Point Assessment Charge. For each Acceptance/Redelivery Point that Company has to move helium-gas mixtures to or from the helium storage pipeline, Company shall pay twenty-thousand (\$20,000) dollars per year due at the beginning of each Contract Year. Company has Zero (0) Acceptance/Redelivery Points located at N/A. New pipeline connections during the Contract Year will have Acceptance/Redelivery Point Assessment Charges prorated to the month the connection is made into the storage system. If a pipeline connection is discontinued during the Contract Year, the Acceptance/Redelivery Point Assessment Charges will be prorated to the end of the month after receipt of written notification to the BLM of a Company's intent to remove a pipeline connection from the helium storage pipeline and physical isolation of said connection and associated pipeline (if applicable) is complete.

c. Activity/Storage Charge. For each year that Company has acceptance, redelivery or storage, Company shall pay an annual charge according to the following formula:

$$\frac{A_C + S_C/10 + R_C}{A_T + S_T/10 + R_T} \times [(B_{HP} + B_{ADJ}) \times A_P] - (F_C + F_M) = C_C$$

A_C is the volume of helium (Mcf) accepted per this Contract in the previous fiscal year.

A_T is the total volume of helium (Mcf) accepted by the United States from all Companies in the previous fiscal year.

R_C is the volume of helium (Mcf) redelivered per this Contract in the previous fiscal year.

R_T is the total volume of helium (Mcf) redelivered by the United States to all Companies in the previous fiscal year.

S_C is the average balance of helium (Mcf) in storage per this Contract for the previous fiscal year, determined by summing the twelve (12) end of month contract helium balances for the previous fiscal year and dividing by twelve (12).

S_T is the average total balance of helium (Mcf) in storage per all Companies' contracts in the previous fiscal year, determined by summing the twelve (12) end of month total private helium balances for the previous fiscal year and dividing by twelve (12).

B_{HP} is the approved budget amount for the helium storage system and its supporting services for each succeeding fiscal year. A representative, but non-binding example is attached as Exhibit A.

B_{ADJ} is the difference between the prior year's budget and the actual expenses. This factor will be zero (0) unless the prior's year budget differs from the actual expense by more than two (2) percent, excluding the compression costs contemplated in FY-2001 (see Article 4.4) and Helium Enrichment Facilities (see Article 4.5). This factor will be introduced in FY-2002 budget year.

A_P is the percentage of the budget of the Federal Helium Program necessary to operate the helium storage system for the benefit of all private Companies for each succeeding fiscal year, and is determined by dividing the total private helium handled ($A_T + R_T$) by the total helium handled plus government In-Kind Crude Helium Sales transferred ($A_T + R_T + I_{KT}$) from the previous fiscal year. The Budget for compression is not part of the A_P and is covered in Article 4.4.

I_{KT} is the total volume of Government In-Kind Crude Helium Sales (Mcf) transferred to all Companies in the previous fiscal year.

F_C is the total of all Contract Assessment charges for all Companies as described in paragraph 4.1.a.

F_M is the total of all Acceptance/Redelivery Point Assessment Charges for all applicable Companies as described in paragraph 4.1.b.

C_C is the Activity/Storage Charge allocated to this Contract.

The Activity/Storage Charge will be billed in nine (9) equal monthly payments starting in January of each Contract Year. Any new storage contracts signed during the Contract Year shall cause the C_C to be adjusted by the amount of the expected acceptance and/or redelivery of the new Contract. All C_C charges for all storage contracts will be adjusted to reflect the new storage contract on the first month following actual acceptance and/or redelivery by the new storage contract. All C_C charges for all storage contracts will be adjusted to reflect a change in the number of pipeline connections during the Contract Year.

d. Low Purity Charge (L_P). For all crude helium plants constructed or that have had their helium recovery process modified prior to 1992, the United States agrees to accept helium that is below 65 percent helium by volume and greater than or equal to 50 percent helium by volume without having to pay the Low Purity Charge. For all crude helium plants constructed or that have had their helium recovery process modified after 1991, the United States agrees to accept helium that is below 65 percent helium by volume and greater than or equal to 50 percent helium by volume, Company agrees to pay a low purity charge which will be assessed on a per Mcf basis as determined by the following formula.

$$\frac{B_{HP} \times A_P}{A_T + S_T/10 + R_T} = L_P (\$/\text{Mcf})$$

Any crude helium delivered to the helium storage system that contains less than fifty (50) percent helium by volume will not be credited to the respective storage account.

e. Transfer Charge. For each transfer of helium to another contract, Company shall pay to United States two-hundred (\$200) dollars.

f. Low Sample Pressure Charge. Sample collection and analysis as per Article VI, Sec. 6.11. A charge of two hundred (\$200) dollars will be assessed for each sample cylinder selected for laboratory analysis that fails to have sufficient pressure at time of pick-up to allow a laboratory analysis for the previous month's composite accumulated sample. No charge will be assessed for days of inactivity.

Sufficient composite sample gas cylinder pressures are defined as:

1. 450 psi for 250cc containers
2. 900 psi for 125cc containers
3. 115 psi for 1-liter containers

Unless explicitly stated in this Article, all overages or underages (i.e. low purity charge, transfer charge and low sample pressure charge) collected under paragraph 4.1 shall not affect each succeeding year's budget calculation. In addition, the Contracting Officer shall, on or before July 1 of each year, schedule a meeting with all parties hereto to allow inspection and consultation of the upcoming operating budget.

4.2 In addition to the charges specified in paragraph 4.1, Company shall reimburse United States for its portion of the full amount of any expenses incurred by United States (and not included in the charges pursuant to paragraph 4.1) for repair, construction, installation, modification, or operation of any facilities, pipeline connections, metering stations, compressor stations, gas measurement software, or other modification or installation that may be required in the helium storage system for the purpose of this Contract: Provided, however, That any such construction or installation which shall require the expenditure of more than fifty thousand dollars (\$50,000), on a per Company basis, will be made only with the prior written consent of Company. In the event that Company shall refuse to consent to any such construction or installation or fail to pay or reimburse United States for any expense incurred by United States under this paragraph 4.2, United States will, in addition to any other remedies which may be available to it, thereby be relieved of any obligation under this Contract which United States is unable to perform because of Company's refusal to consent to such construction or installation or failure to pay or reimburse United States for such expenses. Any facilities constructed or installed by United States and paid for by Company pursuant to this paragraph 4.2 that may be removed without damaging or otherwise adversely affecting the helium storage system shall become the property of Company after any such facilities are no longer necessary for the purpose of this Contract and may be removed within a reasonable time by Company.

4.3 In addition to the payments and reimbursements specified in the preceding paragraphs 4.1 and 4.2, Company shall pay United States any charges made by United States in redelivering contained helium to Company pursuant to any mutual agreement under paragraph 2.4 or 2.5 of Article II.

4.4 During any Contract Year in which Compression Facilities are available for operation, the costs related to this operation will be excluded from Article 4.1 and instead apportioned on the following basis:

$$\frac{R_C}{R_T} \times (F_F + F_S + F_V) = K_C$$

R_C as previously defined.

R_T as previously defined.

F_F is the Fixed Compression Fee as defined in the *BLM Crude Helium Compressor Construction and Compression Services Agreement*.

F_S is the Semi-Fixed Compression Fee as defined in the *BLM Crude Helium Compressor Construction and Compression Services Agreement*.

F_V is the Variable Compression Fee as defined in the *BLM Crude Helium Compressor Construction and Compression Services Agreement*.

K_C is the Compression Charge allocated to this contract.

This Compression Charge will be billed on a monthly basis. The monthly statements will consist of three parts: the Fixed, Semi-fixed and Variable Compression Fees. The Fixed Compression Fee (F_F) and Semi-fixed Compression Fee (F_S) will be constant during the year and will be recalculated and adjusted at the start of each Contract Year. The Variable Compression Fee (F_V) will be calculated and billed one (1) month in arrears. Any new storage contracts signed during the Contract Year shall cause the K_C to be adjusted by the amount of the expected redelivery of the new Contract. Compression Charges for all storage contracts will be adjusted to reflect the new storage contract on the first month following actual redelivery by the new storage contract.

Utility cost of the metered natural gas required for the operation of the Compression Facilities, will be the monthly average NGPL Amarillo Mainline Spot Gas Price as published in the Intelligence Press, Inc. Natural Gas Intelligence Report. If such index ceases to be published, United States and the Cliffside Refiners L.P. shall agree on a suitable replacement. Charges will be based on a per MMBtu for accounting purposes.

4.5 During any Contract Year in which Enrichment Unit Facilities are available for operation, the costs related to this operation will be excluded from Article 4.1 and instead apportioned on the following basis:

$$\frac{((E_A \times T_R) + I_C + C_{ADJ}) \times 20\%}{CH_S} = RM_F (\$/Mcf)$$

E_A is the annual enrichment charge as calculated when finalized and subsequently adjusted as allowed in the *Enrichment Services Agreement - Exhibit C* and *Helium Reserve Management Agreement (BLM HRMA NM090-0002)*.

T_R is the years remaining in the *Enrichment Services Agreement*.

I_C is the infrastructure costs expended by the United States associated with storing, producing, and processing of government- and privately-owned crude helium. These costs include, but are not limited to pipelines, meter equipment, separators, control systems and other construction used solely for the purpose of delivering, controlling and measuring feed gas to the Enrichment Unit Facilities required for its start-up and continued operation and not collected for in other Articles of this Contract.

C_{ADJ} is the cost adjustment factor and will initially be zero (0) and can be a positive or negative number. Future recalculations of the RM_F shall use the cost adjustment factor to align prior years' collections under this Article 4.5 so as to match reservoir management fee collections against actual Helium Enrichment Facilities costs.

CH_S is the total of (i) the remaining government-owned crude helium in Mcf purchased under the authority of the Helium Act Amendments of 1960 and (ii) the privately-owned crude helium remaining in the United States helium storage reservoir at the initial and subsequent recalculations of the RM_F .

RM_F is the Reservoir Management Fee in dollars per Mcf as referenced in the *Enrichment Services Agreement*. The intent of the RM_F is to recover 20 percent of the costs associated with the design, construction and operation of the Helium Enrichment Facilities over the life of the said facilities operation.

Reservoir Management Fees (RM_F) will only be payable by those companies who remove helium from the helium storage system for eventual refining and/or purification ("Helium Refiner"). If the Company is a Helium Refiner, the RM_F will be billed to the Company on a monthly basis for any month in which the Company has a net reduction of its crude helium in storage under this Contract. The Company agrees to pay the RM_F on a per Mcf basis for each Mcf of helium removed from storage. All helium removed from storage after the initial start up of the Helium Enrichment Facilities shall be assessed a RM_F . The United States will calculate the RM_F each month based on the Helium Refiner's redeliveries minus the acceptances; however, transfers from crude helium extractors will credit the Helium Refiner's RM_F during the month that said transfer is completed. The RM_F per Mcf rate shall be calculated initially upon completion of the Helium Enrichment Facilities and at the start of each Contract Year through the final year of the *Enrichment Services Agreement*. If helium in excess of 600 million cubic feet remains in the helium storage reservoir at the end of the *Enrichment Services Agreement*, the RM_F per Mcf rate will be renegotiated to include any additional costs to continue the operation of the Helium Enrichment Facilities.

ARTICLE V

Billing and Payment

5.1 United States shall on or before the twentieth (20) day of each calendar month render to Company a statement for the preceding calendar month showing: (1) the volume of helium-gas mixture accepted by United States' helium storage system from Company; (2) the percentage of helium in such volume; (3) the volume of contained helium; (4) the volume of helium-gas mixture redelivered to Company by United States; (5) the percentage of helium in such redelivered helium-gas mixture; (6) the volume of contained helium redelivered; (7) the net volume of Company's contained helium remaining in United States' helium storage system; and, (8) the sum of money due and payable to United States for the succeeding month because of the applicable charges specified in Article IV, together with whatever calculations and any other information in addition to the aforementioned as may be required to substantiate the monthly activity.

5.2 United States shall bill Company separately for any amounts due United States under the provisions of paragraph 4.2 of Article IV or Article XIII within sixty (60) days after United States determines the amounts due United States thereunder.

5.3 Company shall pay to United States the amounts due United States as billed in accordance with paragraphs 5.1 and 5.2 above within thirty (30) days of the date of such billing.

5.4 In the event the Company discovers an error in the billing statement, or in any of the evidence submitted in support of such statement, Company shall pay the amount billed and upon correction of said error, adjustments between the parties hereto of any amounts due shall be made on the billing statement for the succeeding month following correction of such errors. In the event that either party discovers an error in any billing statement, or in any payment or documents submitted pursuant to this Article V, such error shall be adjusted within thirty (30) days following determination of the extent of such error provided that claim shall have been made within twelve (12) months from the date of such billing statement or the submission of such payment or documents.

5.5 In the event that a billing statement by United States is delayed beyond the date when such statement is normally due as provided in this Article V, then the time of payment by Company shall be extended by the period of such delay.

5.6 Company shall pay amounts due to the United States for accrued storage charges under any Existing Agreements within thirty (30) days of the effective date of this Contract or in accordance with the payment schedule agreed upon between the United States and the Company.

5.7 In the event that any payments by Company in accordance with this Article V are not made within thirty (30) days after date on which such payment is due, each such payment shall be collected in accordance with Public Law 97-365, the Debt Collection Act of 1982, as amended which includes administrative fees and other penalties.

ARTICLE VI

Measurement

6.1 Company shall construct, install, or otherwise provide, operate, and maintain at the points of delivery and redelivery of contained helium hereunder all of the equipment necessary for the measurement and analysis of the helium-gas mixture delivered by Company to United States and redelivered by United States to Company: Provided, however, That all of such equipment and the installation which all of it together comprises must at all times be suitable, in the United States' opinion, for its intended purpose. United States shall not be obligated either to accept contained helium from Company for storage hereunder or to redeliver contained helium to Company from storage hereunder whenever, in the United States' opinion, any of the said equipment of the installation that it comprises is unsuitable for its intended purpose.

6.2 United States may, at its option and expense, install telemetering equipment on Company's measurement installation; however, no such telemetering equipment shall be installed by United States in any way that would, in Company's opinion, interfere adversely with the operation or the accuracy of Company's measurement equipment.

6.3 The unit of measurement for the helium-gas mixture and contained helium hereunder shall be "Mcf" as defined in Article I of this Contract. The helium-gas mixture shall be measured at its pressure and temperature in the measurement equipment, and the volumes of helium-gas mixture and contained helium shall be calculated to the unit of measurement in accordance with Ideal Gas Laws corrected for deviation as provided in this Article VI, or as the parties may hereafter otherwise mutually agree in writing. The atmospheric pressure at the meter shall be assumed to remain constant at the standard barometric pressure at the altitude of the measurement equipment.

6.4 The helium-gas mixture shall be measured by orifice meters installed and operated in accordance with methods prescribed by the American Gas Association, Gas Measurement Committee

Report No. 3, dated April 1955, as properly amended and modified thereafter; provided, however, if either party finds by experience and can demonstrate by experimental evidence that such report is not applicable to measurement of such helium-gas mixture to the extent that measurements made in accordance with such report are found to be in error by more than one-half of one (0.5) percent, then the parties hereto shall seek more reasonable and practical method to correct such error. Company shall use the *Emerson ROC 809 Electronic Flow Meter (EFM) using Detailed Characterization Method (DCM)*. United States and Company mutually agree that the Company shall design, procure, and install a metering facility as applicable in accordance with Article VI. The United States will inspect the metering facility *and approve it*.

6.5 Orifice meters shall be subjected to the following tests and inspections by Company with United States witnessing:

- a. The orifice plates shall be removed and inspected upon United States request but not more than once each month.*
- b. The meter tubes may be inspected at least once each year and upon initial plant startup or installation of another meter tube.*
- c. All calibrations requirements for the Electronic Flow Meter (EFM), Multi Variable Sensors (MVS), shall be in accordance with ROCLINK 800 User manual, ROC 809 Remote Operations Controller Instruction Manual, and all others related manufacturer manuals.*
- d. The parties may mutually agree upon other additional tests and inspections and other time intervals for making the above tests and inspections.*

6.6 The super compressibility factors *will be the calculated value by Emerson ROC 809 Electronic Flow Meter (EFM) using Detailed Characterization Method (DCM)*.

6.7 Temperature determinations shall be obtained by the use of a continuous recording thermometer so installed that it will properly record the flowing temperature of the helium-gas mixture in the meter run. Temperature recorders shall be calibrated at least once each month with mercury test thermometers or other mutually acceptable equipment.

6.8 Company shall not install any attachments to the United States side of meter run after initial startup without the written consent of the Contracting Officer.

6.9 Specific gravity determinations shall be obtained by the use of a continuous recording gravimeter having a mutually acceptable range and so installed that it shall properly record the specific gravity of the helium-gas mixture passing through the meter runs. The gravimeter shall be checked, adjusted if necessary, and calibrated with a gravity balance at least once each month by Company. Calculation of specific gravity from gas chromatograph analysis will be allowed if gas stream conditions permit.

6.10 Company shall install, operate, and maintain near the point of measurement a continuous recording analytical instrument for determining the percentage of helium by volume in the helium-gas mixture. This instrument shall be a chromatograph designed for this purpose or an instrument at least as accurate. It shall be installed, operated, and maintained in accordance with its manufacturer's recommendations and shall be tested and calibrated as often as is necessary for proper and satisfactory operation. The percentage of helium in samples used in such tests and calibration shall be determined by laboratory analysis utilizing the charcoal adsorption principle as described in Bureau of Mines "Technical Procedure of Analysis of Gas Mixtures for Helium Content, 1975," or other mutually accepted procedure. The aforementioned chromatograph will measure helium, nitrogen, methane, and hydrogen. Measurement of other components may be required so that at least ninety-nine *point eight* (99.8) percent of the gas stream components are directly measured.

6.11 Company shall install, operate, and maintain near the point of measurement, suitable equipment to collect a sample each day that is representative of the twenty-four (24) hour helium-gas

mixture tendered for delivery. Company shall make a sample that is adequate for laboratory analysis available to United States at the measurement site. This sample shall be retained until United States witnesses the next test of the measurement facility.

6.12 Each party shall have the right, at reasonable times, to inspect measuring facilities installed and operated by the other party in the presence of a representative of the installing party and to ask for tests and witness tests thereof but in no way to alter or in any manner disturb, manipulate, or adjust the facilities of the other party. If either party at any time desires a test or inspection of any meter or facility pertaining to measurement hereunder or if a party observes a variation between meters upon which a billing statement is based and any check meter, such party shall promptly notify the other party thereof. Each party shall give the other party reasonable notice of the time of monthly and annual tests and inspections of measuring facilities in advance of the holding of such tests and inspections so that the other party may conveniently have its representatives present.

6.13 If, upon test or inspection, any part of any measuring facility is found to be inaccurate by an amount exceeding one (1.0) percent at a reading corresponding to the average rate of flow or condition for the period since the last preceding test or inspection, then such part shall be adjusted to zero error and any previous readings shall be corrected for zero error for the period which is known or agreed upon, but in case the period is not known or agreed upon, such correction shall be for a period equal to one-half of the time elapsed since the date of the last such test or inspection not exceeding a correction period of sixteen (16) days.

6.14 The volume of contained helium shall be determined by multiplying the volume of helium-gas mixture by the volume percentage of helium. The helium percentage used in this computation shall be as determined by the recording analytical instrument described in paragraph 6.10 if it is operative; otherwise a laboratory analysis (utilizing the charcoal adsorption principle previously referenced) of the representative sample described in paragraph 6.11 shall be used to determine the contained helium for the day. One such computation shall be made for the volume of contained helium tendered for delivery hereunder each fifteen (15) minute period or as determined by *Emerson ROC 809 Electronic Flow Meter (EFM) using Detailed Characterization Method (DCM)*.

6.15 Charts, records and electronic data from all measuring facilities to be used for billing computation shall remain the property of Company. Company shall submit to United States records, charts and electronic data from said measuring facilities, together with calculations therefrom, for inspection subject to return to Company within sixty (60) days after receipt thereof. Such charts and records shall be kept on file by Company for the mutual use of the parties for a period of not less than two (2) years from date of such charts, records, and electronic data.

6.16 Each party shall have the right, at its expense, to install, operate, and maintain facilities for checking measurements provided in this Article VI which, without limitation, include meters, gas analyzers, telemeters, and associated equipment of such kind and character as a party may desire. Such facilities shall be installed, operated, and maintained so as to in no way affect the accuracy of the measuring facilities used for billing purposes under this Contract. Each party shall, at reasonable times, have access to the checking facilities installed by the other party. The reading, calibration, and adjustment of check facilities shall only be made by employees or agents of the installing party. Charts, records, and computations from checking facilities shall remain the property of the owner of such facilities. However, such charts, records, and computation shall be submitted upon request to the other party for inspection and copying subject to return within sixty (60) days after receipt thereof.

6.17 In the event that any of the samples or any of the records mentioned in this Article VI are lost, damaged, or destroyed, and the parties should be unable to otherwise agree upon a basis of determining any factors that are unknown by reason of such loss or damage, then the readings of such records or results of such analyses shall be computed the same as the average corresponding readings or results prevailing in either a five (5) day interval preceding or following the period in question, or both intervals if readings and results are available for each.

ARTICLE VII

Overdrawn Account

7.1 Company agrees to make sure that sufficient helium is available in this Contract account at all times to offset transfers, and withdrawals.

7.2 If this Contract is overdrawn, Company agrees as follows:

- a. Verbal notification from the United States that the storage account is overdrawn constitutes official notification.
- b. To shut the valve to the helium storage pipeline, and keep it closed until notified by the United States that it can be opened.
- c. Company agrees to pay the United States, for each contract day that the Contract account is overdrawn, one thousand (\$1,000) dollars in liquidated damages and replace two (2) times the volume of helium overdrawn.
- d. Company agrees to pay the amount due from paragraph 7.2.c in accordance with paragraph 5.2 of Article V.
- e. If Company overdraws account for more than thirty (30) days in a Contract Year the United States shall determine the Company to be unacceptable to transfer helium for a minimum period of one (1) year.
- f. This Article does not prevent the United States from seeking other legal avenues that may be available.

ARTICLE VIII

Rights-of-Way

8.1 Each party shall grant to the other, so far as it has the right to do so and so long as this Contract is effective and to the extent possible without causing interference with its own operations, rights-of-way on land owned or controlled by it for the other party's pipelines and other equipment as may be necessary or desirable in fulfilling such party's rights and obligations under this Contract, with full right of ingress and egress to and from the premises, and further right to do thereon acts necessary or convenient for the carrying out of the terms and provisions of this Contract. Pursuant to this Article, the grantor and grantee agree to hold each other harmless to the extent allowed by applicable law, subject to the availability of appropriations by Congress for such purposes. All equipment placed by one party upon the land of the other shall be and remain the property of the party placing same and be subject to removal by it at any time.

ARTICLE IX

Liability

9.1 United States shall be responsible for the safe storage of Company's contained helium upon the acceptance by United States of such contained helium after it is measured in the measurement installation provided by Company and shall remain so responsible for such contained helium until the volume of contained helium to which Company is entitled hereunder is redelivered to Company: Provided, however, That the United States shall have no liability to Company for any loss or damage to Company's

contained helium as a result of Force Majeure while such contained helium is in the possession of United States.

9.2 Neither Company nor United States shall be held to be responsible or liable for damage for the acts or the conduct of the other.

9.3 For the purposes of determining helium value under Articles III and XI, an agreed valuation of helium in storage shall be used. This value shall be based upon Company supplied acquisition cost data for the preceding twelve (12) months.

ARTICLE X

Force Majeure

10.1 In the event of either party's being rendered unable wholly or in part by force majeure to carry out its obligations under this agreement, other than to make payments of amounts due hereunder, it is agreed that on such party's giving notice in writing or by telegraph to the other party, stating the full particulars of such force majeure as soon as possible after the occurrence of the cause stated in said notice, the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such inability to perform shall, so far as possible, be remedied with all reasonable dispatch. Should any losses of helium occur from the helium storage system as a result of force majeure, such losses shall be borne by all persons and companies, including United States, storing helium in the helium storage system by such person or company including United States bears to the total volume of contained helium in the helium storage system at the time of the occurrence of the force majeure.

10.2 The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, and restraint of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery, equipment, or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of gas wells or pressure protection devices, inability to obtain materials, supplies, or permits, and any laws, orders, rules, regulations, acts, or restraints of any government or governmental body of authority whether civil or military and any other cause, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to avoid. Settlement of strikes and lockouts shall be wholly within the discretion of the party having the difficulty.

ARTICLE XI

Termination

11.1 It is hereby expressly understood and agreed that if default be made in the payment of any of the charges hereinbefore specified to be paid, or any part thereof, as aforesaid, for one hundred twenty (120) days after written notice, it shall be lawful for United States at its election to declare this Contract terminated. United States shall have a possessory lien on Company's contained helium in storage at the time of termination for payment of all moneys due. The valuation of helium in storage in regard to such a lien shall be established by the procedures indicated in Article IX. Company agrees that United States at its option may, by way of set off, take title to a volume of Company's contained helium in storage sufficient to compensate United States for all moneys owed by Company. Upon full payment of amount due, Company shall withdraw all of its contained helium remaining in storage at the maximum rate of withdrawal allowed by United States. Company shall pay the charges set forth in Article IV of this Contract until the end of the Contract Year in which all contained helium has been withdrawn from Company storage account.

11.2 At its sole option and twelve (12) months' after written notice of termination, United States may obtain title to all of Company's helium remaining in the storage system on or after the final date of termination by payment at the unit value as determined in Article IX.

11.3 The Company may, at its sole option, terminate this Contract provided that,

a. (1) there has been no acceptance, redelivery, or storage as described in paragraph 4.1.c of Article IV since the beginning of the prior Contract Year, (2) all applicable charges have been paid, and (3) the Company has given the United States twelve (12) months written notice of its election to do so.

or

b. (1) the Company pays all applicable fees due through the end of the Contract Year, (2) all stored helium is removed by the proposed cancellation date, and (3) the Company has given the United States ninety (90) days written notice of its election to do so.

11.4 Company agrees that the United States may terminate this Contract if the Company has been out of compliance with any part of this Contract for a period of one (1) year after having been given appropriate notice of contract non-compliance.

11.5 If normal expiration of this Contract occurs and helium remains in storage, then Company shall withdraw all of its contained helium remaining in storage at the maximum rate of withdrawal allowed by United States or, with United States approval, transfer it into a newly negotiated helium storage contract.

ARTICLE XII

Assignment of Contract

12.1 This Contract and all terms, conditions, and the covenants hereof, shall be binding upon and inure to the benefit of the parties hereto, their successors, and assigns.

12.2 United States may assign any or all of its rights and responsibilities hereunder to another department of the United States.

12.3 The Company shall have the right to transfer title to any part of the Company-owned helium stored in United States facilities as provided for in this Contract. Title may be transferred to any individual or organization that has not been excluded by administrative debarment or suspension by United States or voluntary exclusion under agency regulations implementing Executive Order 12549. The transferee must have a storage contract in good standing.

12.4 The United States will continue to provide storage and redelivery services to such new owners of helium stored by the Company. The terms and conditions for continued services will be the same as those indicated in this Contract.

12.5 If Company merges with or acquires another company holding a like contract, Company agrees that all charges will continue until this Contract is terminated pursuant to Article XI.

ARTICLE XIII

Disputes

13.1 Except as otherwise provided in this Contract, any dispute concerning a question of fact

arising under this Contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Company. The decision of the Contracting Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, Company mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Department of Interior Board of Contract Appeals, or its successor. The decision of the Board shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this Contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: Provided, however, That any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, Company shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of their obligations under this Contract and in accordance with the Contracting Officer's decision.

13.2 This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph 13.1 above. Nothing in this Contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

ARTICLE XIV

Covenant Against Contingent Fees

14.1 Company warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Company for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XV

Officials Not to Benefit

15.1 No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

ARTICLE XVI

General

16.1 Nothing herein shall be construed as requiring Company to deliver helium for storage under this Contract.

16.2 No provision of this Contract shall be construed as exempting the helium stored hereunder from the provisions of Section 5 of the Act.

ARTICLE XVII

Notices

17.1 All notices to be given hereunder shall be written and delivered or sent to the parties at the following addresses:

United States: Field Manager–Amarillo Field Office
 U.S. Bureau of Land Management
 801 South Fillmore Street, Suite 500
 Amarillo, Texas 79101-3545

Company:

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed in duplicate by their proper officers the day and year first above written.

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

By Signed
Field Manager–Amarillo Field Office

By Signed